

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 3514

To amend the Outer Continental Shelf Lands Act to prohibit a person from entering into any Federal oil or gas lease or contract unless the person pays into an Oil Spill Recovery Fund, or posts a bond, in an amount equal to the total of the outstanding liability of the person and any removal costs incurred by, or on behalf of, the person with respect to any oil discharge for which the person has outstanding liability, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 21, 2010

Mr. BEGICH (for himself, Mr. WYDEN, and Ms. KLOBUCHAR) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

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1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Guaranteed Oil Spill  
3 Compensation Act of 2010”.

4 **SEC. 2. FINDINGS.**

5 Congress finds that—

6 (1) the Oil Pollution Act of 1990 (33 U.S.C.  
7 2701 et seq.)—

8 (A) was passed directly in response to the  
9 Exxon Valdez oil spill;

10 (B) establishes strict liability for parties  
11 responsible for the discharge of oil into navi-  
12 gable waters, shorelines, or the exclusive eco-  
13 nomic zone;

14 (C) establishes liability for damages, in-  
15 cluding damages related to all cleanup and re-  
16 moval costs, natural resources, real or personal  
17 property, subsistence use of natural resources,  
18 government revenues, diminished profit and  
19 earning capacity, and increased public services;  
20 and

21 (D) limits the liability of responsible par-  
22 ties for damages beyond removal costs by vessel  
23 and facility type;

24 (2) the annual report of the Coast Guard on li-  
25 ability limits under the Oil Pollution Act of 1990  
26 (33 U.S.C. 2701 et seq.) for fiscal year 2009 indi-

1 cates that 51 vessel oil spills since the date of enact-  
2 ment of that Act caused damages that exceeded the  
3 liability limits for the applicable class of vessel;

4 (3) in the Coast Guard and Maritime Transpor-  
5 tation Act of 2006 (Public Law 109–241; 120 Stat.  
6 516), Congress increased the liability limits under  
7 the Oil Pollution Act of 1990 (33 U.S.C. 2701 et  
8 seq.) for single- and double-hulled vessels and gave  
9 the Coast Guard the ability to further adjust those  
10 limits for inflation;

11 (4) the Internal Revenue Service estimated the  
12 balance of the Oil Spill Liability Trust Fund estab-  
13 lished by section 9509 of the Internal Revenue Code  
14 of 1986 to be \$1,700,000,000 at the end of fiscal  
15 year 2009, pending resolution of outstanding claims  
16 against the Fund;

17 (5)(A) the cleanup of the oil spill resulting from  
18 the grounding of the Exxon Valdez on Bligh Reef in  
19 Prince William Sound on March 24, 1989, was de-  
20 clared complete in 1992 by the Coast Guard and the  
21 State of Alaska and cost Exxon \$2,000,000,000;

22 (B) in a settlement approved by a United  
23 States district court on October 9, 1991, Exxon paid  
24 the State of Alaska and the Federal Government the  
25 equivalent of \$900,000,000 (made in annual pay-

1 ment over 10 years) to settle the civil claims associ-  
2 ated with the Exxon Valdez oil spill, of which a por-  
3 tion was made for reimbursement for cleanup costs;

4 (C) under a separate settlement of Federal  
5 criminal charges, Exxon also paid \$25,000,000 in  
6 fines and \$100,000,000, divided equally between the  
7 United States and Alaska, as restitution for criminal  
8 conduct by Exxon;

9 (D) in a case consolidated into the case styled  
10 Exxon Shipping Co. v. Baker (128 S. Ct. 2605  
11 (2008)), a jury awarded \$287,000,000 for damages  
12 to private parties and an additional \$5,000,000,000  
13 in punitive damages; and

14 (E) after nearly 2 decades of appeals, on June  
15 25, 2008, the Supreme Court issued a judgment lim-  
16 iting punitive damages to compensatory damages,  
17 calculated at \$507,500,000, a reduction to essen-  
18 tially 10 percent of the initial jury award;

19 (6) as of June 16, 2010, a scientific team  
20 under the direction of Secretary of Energy Steven  
21 Chu, Secretary of the Interior Ken Salazar, and the  
22 Chair of the National Incident Command's Flow  
23 Rate Technical Group, Dr. Marcia McNutt (Director  
24 of the United States Geological Survey), announced  
25 an estimated flow rate of between 35,000 and

1 60,000 barrels per day of hydrocarbons into the Gulf  
2 of Mexico from the Macondo Prospect well, known  
3 as MC 252, resulting from the blowout and explo-  
4 sion of the mobile offshore drilling unit Deepwater  
5 Horizon that occurred on April 20, 2010, and result-  
6 ing hydrocarbon releases into the environment;

7 (7) that estimate greatly exceeds the estimated  
8 10,800,000 gallons (250,000 barrels) spilled by the  
9 grounding of the Exxon Valdez on Bligh Reef in  
10 Prince William Sound on March 24, 1989, and is  
11 now the largest known oil spill in United States wa-  
12 ters;

13 (8) the Gulf Coast region produced  
14 1,273,424,000 pounds of seafood in 2008 worth  
15 \$697,591,000 to the fishermen in the Gulf of Mex-  
16 ico, which is the second most productive fishing re-  
17 gion in the United States, boasting 4 of the top-10  
18 commercial fishing ports of the United States in  
19 Empire-Venice, Intracoastal City, and Cameron,  
20 Louisiana, and Pascagoula-Moss Point, Mississippi;

21 (9) recreational fisheries are important to the  
22 Gulf Coast economy, with (according to the National  
23 Marine Fisheries Service) 3,200,000 individuals tak-  
24 ing 25,000,000 recreational fishing trips in the Gulf

1 region in 2008 in which 194,000,000 fish were land-  
2 ed;

3 (10) as of June 7, 2010, the National Oceanic  
4 and Atmospheric Administration closed 78,264  
5 square miles of the Gulf of Mexico to fishing, an  
6 area equivalent to 32.3 percent of the total exclusive  
7 economic zone of the Gulf; and

8 (11) commercial sectors employing a wide spec-  
9 trum of the Gulf Coast population (including resi-  
10 dents involved in tourism, oil and gas exploration,  
11 and a host of support and service industries) are ex-  
12 periencing a severe economic disruption due to the  
13 blowout and explosion of the mobile offshore drilling  
14 unit Deepwater Horizon that occurred on April 20,  
15 2010, and resulting hydrocarbon releases into the  
16 environment.

17 **SEC. 3. OIL SPILL RECOVERY FUND.**

18 (a) IN GENERAL.—The Outer Continental Shelf  
19 Lands Act is amended by inserting after section 8 (43  
20 U.S.C. 1337) the following:

21 **“SEC. 8A. OIL SPILL RECOVERY FUND.**

22 “(a) DEFINITION OF FUND.—In this section, the  
23 term ‘Fund’ means the Oil Spill Recovery Fund estab-  
24 lished under subsection (c).

1       “(b) COVERAGE OF OUTSTANDING INCIDENT LIABIL-  
2   ITY.—

3           “(1) IN GENERAL.—No person shall be eligible  
4   to enter into any Federal oil or gas lease or contract  
5   after the date of enactment of this section unless the  
6   person pays into the Fund, or posts a bond, in an  
7   amount equal to the difference between, as deter-  
8   mined by the Secretary as of the date of the applica-  
9   tion for the lease or contract—

10           “(A) the total of the outstanding liability  
11   of the person under section 1002 of the Oil Pol-  
12   lution Act of 1990 (33 U.S.C. 2702) (without  
13   regard to any liability limit under section 1004  
14   of that Act (33 U.S.C. 2704)) and any removal  
15   costs incurred by, or on behalf of, the person,  
16   with respect to any incident occurring before,  
17   on, or after the date of enactment of this sec-  
18   tion for which the person has outstanding liabil-  
19   ity; and

20           “(B) the outstanding balance in the Oil  
21   Spill Liability Trust Fund established by sec-  
22   tion 9509 of the Internal Revenue Code of  
23   1986, that is attributable to the person.

24           “(2) NO EFFECT ON OTHER LIABILITY.—Pay-  
25   ment into the Fund or posting of a bond in accord-

1       ance with paragraph (1) does not, with respect to  
2       the applicable incident—

3               “(A) limit any civil or criminal liability of  
4               the person; or

5               “(B) determine or affect an appropriate  
6               level of claims or damages.

7       “(c) ESTABLISHMENT OF FUND.—There is estab-  
8       lished in the Treasury of the United States a fund to be  
9       known as the ‘Oil Spill Recovery Fund’ to be administered  
10      by the Secretary, to be available without fiscal year limita-  
11      tion and without being subject to appropriation, for pay-  
12      ment of covered removal costs and damages described in  
13      section 1002 of the Oil Pollution Act of 1990 (33 U.S.C.  
14      2702) associated with any incident.

15      “(d) TRANSFERS TO FUND.—

16              “(1) IN GENERAL.—The Fund shall consist of  
17              such amounts as are appropriated to the Fund  
18              under paragraph (2).

19              “(2) FEES.—There are appropriated to the  
20              Fund, out of funds of the Treasury not otherwise  
21              appropriated, amounts equivalent to amounts col-  
22              lected as fees and received in the Treasury under  
23              subsection (b)(1).

24      “(e) REPAYMENT.—

1           “(1) IN GENERAL.—In the case of any person  
2 who has paid into the Fund under subsection (b), on  
3 the date described in paragraph (2), the Secretary  
4 shall transfer to the person an amount equal to—

5                   “(A) the amount of unexpended funds of  
6 the person in the Fund; plus

7                   “(B) any accumulated interest on those  
8 funds.

9           “(2) DATE.—The date on which amounts de-  
10 scribed under paragraph (1) shall be repaid is the  
11 earlier of—

12                   “(A) 5 years after the date on which the  
13 amounts were paid into the Fund; and

14                   “(B) the date on which the Secretary  
15 makes a formal determination that all Federal  
16 and State natural resource damage assessments  
17 and all outstanding civil claims relating to the  
18 incident for which the amounts were paid have  
19 been satisfied.

20           “(f) PROHIBITION.—Amounts in the Fund may not  
21 be made available for any purpose other than a purpose  
22 described in subsection (e).

23           “(g) QUARTERLY REPORTS.—

24                   “(1) IN GENERAL.—Not later than 4 times dur-  
25 ing of each fiscal year beginning with fiscal year

1 2010, the Secretary shall submit to the Committee  
2 on Appropriations of the House of Representatives,  
3 the Committee on Appropriations of the Senate, the  
4 Committee on Energy and Natural Resources of the  
5 Senate, and the Committee on Resources of the  
6 House of Representatives a report on the operation  
7 of the Fund during the fiscal year.

8 “(2) CONTENTS.—Each report shall include, for  
9 the fiscal year covered by the report, the following:

10 “(A) A statement of the amounts deposited  
11 into the Fund.

12 “(B) A description of the expenditures  
13 made from the Fund for the fiscal year, includ-  
14 ing the purpose of the expenditures.

15 “(C) Recommendations for additional au-  
16 thorities to fulfill the purpose of the Fund.

17 “(D) A statement of the balance remaining  
18 in the Fund at the end of the fiscal year.

19 “(E) A statement of amount of out-  
20 standing liability determined under subsection  
21 (b) as compared to the balance remaining in the  
22 Oil Spill Liability Trust Fund established by  
23 section 9509 of the Internal Revenue Code of  
24 1986 at the end of the fiscal year.”.

1 (b) SEPARATE APPROPRIATIONS ACCOUNT.—Section  
2 1105(a) of title 31, United States Code, is amended—

3 (1) by redesignating paragraphs (35) and (36)  
4 as paragraphs (36) and (37), respectively;

5 (2) by redesignating the second paragraph (33)  
6 (relating to obligational authority and outlays re-  
7 quired for homeland security) as paragraph (35);  
8 and

9 (3) by adding at the end the following:

10 “(38) a separate statement for the Oil Spill Re-  
11 covery Fund established under section 8A(c) of the  
12 Outer Continental Shelf Lands Act, which shall in-  
13 clude the estimated amount of deposits into the  
14 Fund, obligations, and outlays from the Fund.”.

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